

No. 2011 76724

P. 11

Harris County, Texas, *Plaintiff*,

**The State of Texas, acting by and through the
Texas Commission on Environmental
Quality, *A Necessary and Indispensible Party***

VS.

**International Paper Company,
McGinnes Industrial Maintenance
Corporation, Waste Management, Inc.
and Waste Management of Texas, Inc.**

Defendants

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

**PLAINTIFF HARRIS COUNTY'S
ORIGINAL PETITION**

JUDICIAL DISTRICT
FILE
Chris Daniel
District Clerk
DEC 2

DEC 22 29M

By _____
Harris County, Texas
Deputy

Original Petition and in support

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Harris County Texas ("Harris County") files this Original Petition and in support thereof, Harris County would show this Court as follows:

I. Introduction

1. The citizens of Harris County no longer feel secure while swimming in the San Jacinto River. The citizens of Harris County no longer trust that the fish they catch from the San Jacinto River are safe to eat. The citizens of Harris County can no longer enjoy camping, picnicking or eating fish or blue crabs in the San Jacinto River free from fear. The citizens of Harris County have lost the ability to enjoy the San Jacinto River and Harris County and its residents have been severely impacted as a result.

2. The San Jacinto River has been taken away from Harris County and its 4 million residents by the Defendants who have violated the law and caused and allowed 2,3,7,8-TCDD — a type of dioxin widely regarded as the most toxic chemical ever made by man — and other

types of dioxin to continuously pollute the San Jacinto River for over 45 years. Defendants have not behaved as responsible corporate citizens in Harris County and should be penalized for their endangerment of the citizens and waters of Harris County as Texas law provides.

3. The U.S. Department of Health and Human Services has determined that 2,3,7,8-Tetrachlorodibenzo-p-dioxin (referred to as 2,3,7,8-TCDD, which is the type of dioxin Defendants caused and allowed to be released into the San Jacinto River) may reasonably be anticipated to cause cancer and the World Health Organization has determined that 2,3,7,8-TCDD is a human carcinogen. In humans, the most common health effect from 2,3,7,8-TCDD is chloracne, a severe skin disease, with studies also showing that the dioxin may cause changes to blood and urine that may indicate liver damage, alter glucose metabolism and change hormone levels. In certain animal species, 2,3,7,8-TCDD is especially harmful and can cause death after a single exposure, in addition to immune system disorders, liver damage, reproductive damage and birth defects in animals. Ecological health from the dioxin in the San Jacinto River is documented as being threatened at every level of the food chain. Because of these health risks, the State of Texas has issued a consumption advisory for crab and all species of fish from the San Jacinto River Site area, warning women who are nursing, pregnant or who may become pregnant and children under 12 not to consume any fish or blue crab from the area. All others are advised to consume no more than 8 ounces of certain fish within any given month. Adults and children are also advised to avoid the risk of exposure through skin contact by not camping, fishing or picnicking near the San Jacinto River area.

4. Despite the fish advisories, the science and the great weight of evidence of human health and ecological risks, the Defendants responsible for the dioxin pollution in the San Jacinto River have taken the position that there are “minimal health effects from dioxin” and that “dioxin is not bad for human consumption.”

5. Unfortunately, the decades of impacts from the dioxin-laden river cannot be minimized and the citizens of Harris County will continue to bear the burdens and risks associated with the Defendants' persistent toxin and their violations of state law for many more decades to come. Fortunately, the Texas Legislature has specifically authorized Harris County to act on behalf of its citizens to recover penalties under state law for Defendants' pollution violations under the Texas Water Code ("Water Code") and the Texas Health and Safety Code ("Health & Safety Code") and penalties awarded by the court will be shared with the Texas Commission on Environmental Quality. These state penalty policies provide for the Defendants to be held accountable to the residents of Harris County in the form of penalties to compensate the County and the State and deter future misconduct.

6. Because the Defendants chose to cause and allow dioxin to continuously release into the San Jacinto River for many decades putting the public at risk, Harris County has been forced to expend many man hours, resources and taxpayer dollars to try to protect its citizens from this threat. The County's already limited resources have been further strained by the need to address the dioxin waste left behind by the Defendants. These companies achieved a tremendous economic benefit by leaving Harris County and the public holding their waste while they pocketed the profits saved from not having to pay for proper disposal, putting them at a competitive advantage over other responsible companies. The companies who profited from this behavior should pay for and be penalized for the damages and risks they have caused.

7. In 2010 alone, Defendant International Paper reported over \$644 million in net profits and \$25 billion in assets and Defendant Waste Management reported over \$950 million in net profits and \$21 billion in assets. Because Defendants have left a legacy of pollution in Harris County by causing and allowing dioxin to be released into the San Jacinto River instead of spending the money to properly dispose of their dangerous chemicals, it is appropriate that they

now compensate Harris County for the consequence of their choices, actions and inaction that have put the public health and environment at risk.

II. Dioxin in the River

8. On September 3, 1965, a company called McGinnes Industrial Maintenance Company (“MIMC”) was formed. Ten days later, MIMC (now wholly owned by Waste Management of Texas, Inc. and doing business in Texas as Waste Management) acquired an exclusive waste disposal contract to dispose of waste from the Champion paper mill in Pasadena, Texas. While Champion (now International Paper) made money by selling its paper, its paper mill produced an undesirable and dangerous by-product — 2,3,7,8-TCDD (dioxin) — and other types of dioxin that Champion sought to get rid of. Champion chose to have its dioxin waste dumped into ponds built by MIMC located in an area near where the Interstate Highway 10 Bridge crosses over the San Jacinto River, east of the City of Houston between the areas known as Channelview and Highlands, Texas (the “Site”).

9. MIMC constructed its waste ponds so that they were directly adjacent to, and jutting out into, the San Jacinto River. Records indicate that the waste ponds were frequently inundated by the river. In addition to the fact that the dioxin waste seeped from the ponds into the San Jacinto River, records show that liquid waste was also intentionally pumped out of one of the ponds at the Site, directly into the San Jacinto River. MIMC and Champion were ordered to stop discharging waste from the ponds into the San Jacinto River, though subsequent records show that wastes continued to seep from the ponds and the pond levees deteriorated causing continuous releases of dioxin over the following years and decades.

10. Defendants ultimately just abandoned the leaking ponds full of their toxic wastes and left their dioxin unattended and unprotected, causing and allowing the 2,3,7,8-TCDD to quietly seep and migrate even further into the environment. Defendants’ abandonment caused

parts of the waste ponds full of dioxin to become submerged below the San Jacinto River's water surface allowing continuous releases of the dioxin into the water. Aerial photographs attached as Exhibits A, B and C show the Site being submerged under the waters of the San Jacinto River. The Defendants' inaction and failure to take care of the wastes they dumped into the ponds resulted in their dioxin being released and discharged directly and continuously into the River for more than 45 years. During the time at issue in this lawsuit, the Defendants neglected to take any action to protect the citizens and resources of Harris County from the dioxin being released into the San Jacinto River where residents were known to swim, eat fish and crabs, and recreate with their families and children.

11. Many decades later, various watershed studies being conducted by Texas state agencies collected startling data showing that fish and shellfish tissue samples taken in the San Jacinto River contained unusually high dioxin concentrations and exceeded the health-based standard in 97% of fish samples and in 95% of the crab samples. Further testing and chemical analysis confirms that both human and ecological health are threatened by releases of dioxin from the Site and that Defendants' dioxin continues to migrate from the waste ponds into the San Jacinto River. Defendants are sophisticated corporations that must be well aware of the documented health effects of their dioxin on human health and the environment, that their practices of causing and allowing dioxins to pollute the waters of the State of Texas is a serious violation of state law, and that they are subject to civil penalties to Harris County for polluting the water and creating unacceptable risks to human health and the environment, among other things.

12. In 2008, at the urging of Harris County and others, the San Jacinto River Site was ultimately placed on the National Priorities List for Superfund Sites. This state court lawsuit seeks monetary relief under state law and does not seek or challenge any cleanup, removal or

remedial action dictated by federal law, and it does not assert any federal law claims. Defendants should now be required to answer to the people of Harris County for taking the San Jacinto River from them.

III. Parties

13. Harris County is authorized to bring this suit pursuant to Texas Water Code § 7.351 for civil penalties for violations of Chapters 16, 26 or 28 of the Texas Water Code, Chapters 361, 371, 372 or 382 of the Texas Health and Safety Code and the rules and orders promulgated thereunder.

14. Defendant International Paper Company (“International Paper”), successor to Champion Papers, Inc., is a corporation incorporated in the state of New York. It can be served through its registered agent for process CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

15. Defendant McGinnes Industrial Maintenance Corporation (“MIMC”) is a corporation incorporated in the State of Texas. It has its principal place of business in Houston, Texas. It is wholly owned and controlled by Waste Management of Texas, Inc., which is owned by Waste Management, Inc. It can be served through its registered agent for process CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

16. Defendant Waste Management, Inc. (“Waste Management”) is a corporation incorporated in the State of Delaware, with its principal place of business in Houston, Texas. Waste Management has its principal place of business in Texas because it maintains its corporate offices in Houston, and those offices contain its high level officers who direct, control and coordinate its activities. It can be served through its registered agent for process CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234

17. Defendant Waste Management of Texas, Inc. ("WMOT") is a corporation incorporated in the State of Texas. It has its principal place of business in Houston, Texas. Doing business in Texas as Waste Management, WMOT owns 100% of the stock of MIMC and has common directors for both companies as shown below:

MIMC Directors:

Gregory T. Sangalis	5/1/1999 to 7/29/1999
Bryan J. Blankfield	7/29/1999 to 2/1/2011
David P. Steiner	2/1/2001 to 7/1/2003
Linda J. Smith	7/1/2003 to present (as of 2/27/2009)

WMOT Directors:

Gregory T. Sangalis	5/1/1999 to 7/29/1999
Bryan J. Blankfield	7/29/1999 to 2/1/2011
David P. Steiner	2/1/2001 to 7/1/2003
Linda J. Smith	7/1/2003 to present (as of 2/27/2009)

It can be served through its registered agent for process CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234

18. The State of Texas, acting by and through the Texas Commission on Environmental Quality ("TCEQ") or ("Commission"), is a necessary and indispensable party in a suit by a local government to recover civil penalties under the Texas Water Code. TEX. WATER CODE § 7.353. A copy of this Petition, along with a request for waiver of service, has been sent to the Executive Director of the Texas Commission on Environmental Quality.

IV. Discovery

19. The County requests that this case be designated for a Level 3 Discovery Control Plan. Tex. R. Civ. P. 190.

V. Applicable Law

20. Harris County is entitled to bring suit by its own attorney for civil penalties against any person who committed or is committing "a violation or threat of violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code ... under the

commission's jurisdiction ... or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government ... in the same manner as the commission ...". TEX. WATER CODE § 7.351(a).

21. "Except as authorized by the commission, no person may: ... (3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, ...". TEX. WATER CODE § 26.121(a).

22. "In addition to the requirements of § 335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause: (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Natural Resource Conservation Commission; (2) the creation and maintenance of a nuisance; or (3) the endangerment of the public health and welfare." 30 TEX. ADMIN. CODE § 335.4.

23. "Any owner, operator, demise charterer, or person in charge of a vessel or of any on-shore facility or off-shore facility shall immediately undertake all reasonable actions to abate and remove the discharge or spill" of hazardous substances. TEX. WATER CODE § 26.266(a).

24. Any person "who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, ... shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation as the court or jury considers proper." TEX. WATER CODE § 7.102.

25. Harris County is also entitled to recover its attorney's fees, court costs, and investigative costs. Tex. Water Code § 7.108.

VI. Causes of Action

26. **First Cause of Action – Civil Penalties** – Under its authority to enforce environmental laws and regulations pursuant to Water Code § 7.351(a), Harris County sues Defendants for civil penalties for violations of the Water Code, Health & Safety Code and regulations promulgated thereunder.

27. Penalties for violation of this section should be assessed in the maximum amount permitted by law.

28. The Defendants violated the Water Code including but not limited to § 26.121(a) by causing pollution of the waters of the state. Those violations were continuing in nature beginning on the date that that contamination occurred until remedied. Defendants' conduct in connection with the Site has been responsible for contaminating the waters of the state since 1965. Each day of these continuing violations is subject to civil penalty of between \$50 and \$25,000 per day under § 7.102 of the Water Code. Penalties for violation of this section should, therefore, be assessed for the maximum amount permitted by law.

29. The Defendants violated Chapter 30 of the Texas Administrative Code including but not limited to § 335.4, by allowing the storage and discharge of solid waste in such a manner as to create and maintain a nuisance and endanger the public health and welfare. Those violations are continuing in nature beginning on the date that the releases occurred until remedied. Defendants' conduct in connection with the Site has been responsible for contaminating the waters of the state since 1965. Each day of these continuing violations is subject to civil penalty of between \$50 and \$25,000 per day under § 7.102 of the Water Code. Penalties for violation of this section should, therefore, be assessed for the maximum amount permitted by law.

30. Defendants MIMC, Waste Management and WMOT were the operators of the Site and failed to immediately undertake reasonable actions to abate and remove the discharge of hazardous substances from the Site in violation of the Water Code, including but not limited to § 26.266. Those violations are continuing in nature beginning on the date that the releases occurred until remedied. Defendants' conduct in connection with the Site has been responsible for contaminating the waters of the state since 1965. Each day of these continuing violations is subject to civil penalty of between \$50 and \$25,000 per day under § 7.102 of the Water Code. Penalties for violation of this section should, therefore, be assessed for the maximum amount permitted by law.

31. Harris County is not seeking recovery of costs related to remediation, removal or cleanup of any property. Harris County is not seeking any injunction or declaration regarding remediation, removal or cleanup. Instead, Harris County is seeking only civil penalties under Texas law.

32. **Second Cause of Action – Attorney's Fees** – Pursuant to Water Code § 7.108, Harris County asks this Court to award its attorney's fees, court costs and investigative costs incurred in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Texas Supreme Court, the County seeks its additional attorney's fees and court costs on appeal.

VII. Case Not Removable

33. This case is not removable to federal court. There is no federal-question jurisdiction because Harris County is not bringing any federal claims. Instead, Harris County is seeking only civil penalties under Texas law. There is no diversity jurisdiction because Harris County and at least one defendant are citizens of Texas.

VIII. Prayer

34. Upon final trial of this action, Harris County requests that the Court grant judgment against Defendants for:

- a. Money judgment for civil penalties as set forth above;
- b. Attorney's fees, court costs and investigative fees in connection with this action and any appeal;
- c. Prejudgment and postjudgment interest as allowed by law; and
- d. Such additional relief as Harris County may show itself entitled.

Respectfully submitted,

OFFICE OF HARRIS COUNTY ATTORNEY, VINCE RYAN

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Rock W. A. Owens (signed by permission)

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**ATTORNEYS FOR PLAINTIFF, HARRIS COUNTY,
TEXAS**



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this August 30, 2012

Certified Document Number: 50889927 Total Pages: 11

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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